

AMENDED IN SENATE AUGUST 9, 2010

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 231**

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**Introduced by Assembly Member Huber**

February 5, 2009

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An act to amend Section 21094 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 231, as amended, Huber. Environment: California Environmental Quality Act: overriding consideration.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the

environment. For projects whose environmental impacts can not be mitigated to less than significance, existing law authorizes a lead agency to find that specified overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. If a ~~prior environmental impact report~~ *an EIR* has been prepared and certified for a program, plan, policy, or ordinance, a lead agency is required to use a ~~tiered environmental impact report~~ *EIR* for a later project if the lead agency determines that the later project is consistent with the program, plan, policy, or ordinance, and satisfies other criteria.

This bill would authorize a lead agency, *until January 1, 2016*, to rely on a finding of overriding consideration made in a ~~prior environmental impact report~~ *EIR* for a later project if *specified conditions are met, including that* the lead agency determines that the later project's significant impacts on the environment are ~~no~~ *not* greater than *or different from* those identified in the ~~prior environmental impact report from which the project is tiered~~ *EIR*.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21094 of the Public Resources Code is  
 2 amended to read:  
 3 21094. (a) (1) If a prior environmental impact report has been  
 4 prepared and certified for a program, plan, policy, or ordinance,  
 5 the lead agency for a later project that meets the requirements of  
 6 this section shall examine significant effects of the later project  
 7 upon the environment by using a tiered environmental impact  
 8 report, except that the report on the later project need not examine  
 9 those effects that the lead agency determines were either (1)  
 10 mitigated or avoided pursuant to paragraph (1) of subdivision (a)  
 11 of Section 21081 as a result of the prior environmental impact  
 12 report, or (2) examined at a sufficient level of detail in the prior  
 13 environmental impact report to enable those effects to be mitigated  
 14 or avoided by ~~site-specific~~ *site-specific* revisions, the imposition  
 15 of conditions, or other means in connection with the approval of  
 16 the later project.

(2) If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, and the lead agency makes a finding of overriding consideration pursuant to subdivision (b) of Section 21081, the lead agency for a later project that uses a tiered environmental impact report from that program, plan, policy, or ordinance may rely on that finding of overriding consideration if the lead agency determines that the project's significant impacts on the environment are no greater than those identified in the environmental impact report from which the project is tiered. *overriding consideration if all of the following conditions are met:*

(A) *The lead agency determines that the project's significant impacts on the environment are not greater than or different from those identified in the prior environmental impact report.*

(B) *The lead agency incorporates into the later project all the applicable mitigation measures identified by the prior environmental impact report.*

(C) *The prior statement of overriding considerations was not based on a determination that mitigation measures should be identified and approved in a subsequent environmental review.*

(D) *The prior environmental impact report was certified not more than three years before the date findings are made pursuant to Section 21081 for the later project.*

(E) *Section 21166 does not apply to the prior environmental impact report.*

(3) *On and after January 1, 2016, a lead agency may not take action pursuant to paragraph (2) with regard to relying on a finding of overriding consideration made in a prior environmental impact report and paragraph (2) shall become inoperative on that date.*

(b) This section applies only to a later project that the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall

1 analyze whether the later project may cause significant effects on  
2 the environment that were not examined in the prior environmental  
3 impact report.

4 (d) All public agencies that propose to carry out or approve the  
5 later project may utilize the prior environmental impact report and  
6 the environmental impact report on the later project to fulfill the  
7 requirements of Section 21081.

8 (e) If tiering is used pursuant to this section, an environmental  
9 impact report prepared for a later project shall refer to the prior  
10 environmental impact report and state where a copy of the prior  
11 environmental impact report may be examined.

12 SEC. 2. This act is an urgency statute necessary for the  
13 immediate preservation of the public peace, health, or safety within  
14 the meaning of Article IV of the Constitution and shall go into  
15 immediate effect. The facts constituting the necessity are:

16 To promote, as soon as possible, the creation of jobs in the state  
17 by expediting the environmental review of a project, thereby  
18 preserving the public peace, health, and safety, it is necessary for  
19 this measure to take effect immediately.